them. In the meantime, two fresh petitions had been filed by different creditors on the 11th January 1957 and I have no doubt that those interested in obtaining receiving and adjudication orders against these debtors were well advised to adopt this course instead of persisting with the original petitions. It is abundantly clear, on the authority of a *Re a Debtor*[1] that the bankruptcy notices served on the debtors in 1955 were bad and could have been set aside. The fact that the debtors did not make an application to set them aside cannot, in my view, render valid that which was invalid, and therefore, as there was no valid bankruptcy notice, it follows there could be no valid act of bankruptcy and consequently these creditors were not entitled to present these petitions. The normal course, in these circumstances, would be to dismiss the petitions with costs but if as an alternative to this procedure, the creditors ask to be allowed to leave by a side-door, I see no reason why they should not do so provided they pay the debtors' costs of these abortive proceedings as they leave. Accordingly I give leave to withdraw these petitions on payment of the debtors' costs.

In the new petitions filed on the 11th January 1957, the creditors relied upon an entirely different act of bankruptcy. The provisions of paragraph (j) of sub-section (1) of section 3 of the Bankruptcy Ordinance provide that a debtor commits an act of bankruptcy if the Sheriff makes a return that he is possessed of no property liable to seizure. In the present case the Sheriff seized certain goods on behalf of judgment creditors on the 8th January 1957 but a third party, Edward Wan Mau Au by name, claimed them as his property and after some correspondence between the claimant and the judgment creditors' solicitors, they were released. After the release, the Sheriff made a return that the debtors had no property liable to seizure but subsequently, on the 7th February 1957, the debtors filed affidavits in these proceedings, in which they alleged that they were still interested in the business of Lip's Company, that the company's banking account was very interesting, and that the company held stocks of goods worth more than $38,000 and furthermore that they were interested in a housing scheme involving approximately $600,000. The petitioning creditors, however, called oral evidence to rebut the debtors' contention that they still possessed assets and therefore the Sheriff's *nulla bona* return was incorrect. The solicitor for the petitioning creditors stated on oath in the witness box that the debtor, Peter Wong, called at his office on the 15th January 1957 and asked for an interview. He did not request that the interview should be treated without prejudice and after it was concluded, the solicitor communicated the substance of the discussion to his clients in a letter dated the 15th January 1957 which appears as an exhibit to the solicitor's managing clerk's affidavit in these proceedings. Counsel for the debtors, I have no doubt in a wise exercise of his discretion, did not challenge this witness in cross-examination and in my view the proper conclusion to be drawn from the information which was given by Peter Wong to the solicitor for the petitioning creditors on that occasion is that the debtors admitted their indebtedness to the petitioning creditors and also the correctness of the Sheriff's return. I should add that it was not suggested by counsel for the debtors that Peter Wong was not authorised to speak on behalf of his wife at this interview, but if such a suggestion had been made, I would have found that it was a reasonable inference, from all the circumstances of this case, that he was speaking on behalf of his wife as well as on his own behalf on that occasion.

It follows that this case falls within the provisions of paragraph (j) of sub-section (1) of section 3 and that the debtors committed an act of bankruptcy which entitled the creditors to present these petitions on the 11th January 1957. I should perhaps mention that, as an alternative argument, the petitioning creditors advanced the proposition that the Court could not in any event go behind the Sheriff's return, and that the debtors only recourse, if the Sheriff had made a *nulla bona* return incorrectly, was to ask the Court to dismiss the petition under the provisions of sub-section 3 of section 6 of the Ordinance. It is not, however, necessary to decide this alternative argument as I am satisfied that in the present case the Sheriff's return was correct, and accordingly I reserve my position on this point.

For these reasons I made receiving orders and adjudication orders on the petitions of the 11th January 1957 with the usual order for payment of the petitioners costs.

Order accordingly.

Solicitors: *Osborne-Jones & Co.; Allen & Gledhill.*

ABBAS JUMAT v. REG.

[C. C. A. (Whyatt C.J., Whitton and Tan Ah Tah JJ.) March 8, 1957]

[Singapore — Criminal Appeal No. 19 of 1956]

Criminal Trial — Allegation that prosecution had failed to produce material evidence — Leading questions — Witness talking to a member of the jury — Whether accused prejudiced thereby.

This was an appeal against the conviction of the appellant on five charges of using forged cheques. The memorandum of appeal set out under more than thirty different headings the various grounds of appeal but only three grounds were considered relevant by the Court of Criminal Appeal. They were (a) that counsel for the Crown had failed either to place before the jury material

evidence which he had in his possession or to make it available to the appellant; (b) that counsel for the Crown asked a great number of leading questions when examining the principal witness for the Crown; and (c) that a witness was seen talking to the foreman of the jury.

Held: (1) on the facts there was no substance in the complaint that counsel for the Crown had failed either to place before the jury material evidence which he had in his possession or to make it available to the appellant;

(2) although the Court deprecated the fact that many leading questions were put to the principal witness for the Crown, it could not say that it led to injustice in this case;

(3) as it appeared that the conversation between the witness and the foreman of the jury in this case had nothing whatever to do with the trial there was nothing which could possibly have prejudiced the case of the appellant.

Per curiam: although jurymen are allowed to go about while the trial is proceeding, it is desirable they should avoid any contact of any kind with witnesses concerned in the case and should not discuss the case with any one except other jurymen.

Case referred to :—

(1) *R. v. Twiss* 13 Cr. App. R. 177.

COURT OF CRIMINAL APPEAL.

T. T. Rajah for the appellant.

Tan Boon Chiang (Crown Counsel) for the respondent.

The judgment of the Court was delivered by :—

Whyatt C.J. : — The appellant was convicted at the July Assizes on five charges of using forged cheques involving a sum of more than $10,000 and was sentenced to four years imprisonment on each charge, the sentences to run concurrently. He appeals from that conviction and in his memorandum of appeal sets out under more than 30 different headings the various grounds on which he is dissatisfied with the conviction. The Court has spent a great deal of time considering these numerous grounds of appeal and is gravely concerned at the prolixity, and the irrelevancy of many of them. For example, it is made a matter of complaint that the learned trial Judge informed the jury before they retired that he would leave them for ten minutes or so to see if they could reach a conclusion but if they could not, he would arrange to have lunch sent in to them. It is said that the Judge was, in effect, inviting the jury to return a verdict within a fixed period. It is true that counsel for the appellant did not seek to support this ground of appeal at the hearing and in fact informed the Court when he reached this point in his argument that he did not rely upon it, but in our opinion such a ground ought never to have been placed on the record. There were unfortunately many other grounds of appeal placed on the record of which the best that can be said of them is that they were only slightly less irrelevant than this particular ground. There were, for instance, several grounds of appeal in which it was contended that the Hong Kong Bank employees ought to have been more careful before cashing these forged cheques but as the negligence of the Bank employees was not an issue at the trial, it was quite irregular to introduce these matters on appeal. We have however examined the numerous grounds of appeal with care, notwithstanding their prolixity, and have come to the conclusion that there are only three grounds which are worthy of serious attention. None of these three grounds of complaint arises out of the summing-up which, in our opinion, was unpeccable and gave to the jury all the direction and assistance they could possibly require in arriving at a verdict in this case. Two of the grounds are concerned with the conduct of counsel for the Crown and the third ground is concerned with an incident which occurred when a witness spoke to a member of the jury during the course of the trial.

The first complaint made against counsel for the Crown is that he failed either to place before the jury material evidence which he had in his possession or to make it available to the appellant. This is indeed a grave complaint to make against counsel appearing on behalf of the prosecution in a criminal trial and if it were established, it would be a most serious matter. As a result of our examination of the complaint, however, we are satisfied there is no substance in it. The first item of evidence which the appellant says Crown Counsel should have placed before the jury is the report of the document examiner but as the document examiner himself gave oral evidence about the forgeries and furthermore, as the report itself was in the hands of the appellant and was used by him for the purpose of cross-examining the document examiner, it is obvious the appellant was in no way prejudiced in regard to this matter. The second head of complaint is that two ledger clerks were not called by the Crown but in point of fact one of them, who had given evidence at the preliminary inquiry was tendered for cross-examination but the appellant did not ask him any questions, and the other was mentioned only casually during the course of the trial and there is no reason to suppose he could have given any evidence which would have been favourable to the appellant. Lastly the appellant complained that a waiter at a restaurant who was said to have seen the appellant with a prosecution witness at a material time had not been called. The Court was informed by counsel for the Crown that the reason he was not called was that he could not be traced at the time of the trial and the Court, of course, accepts an explanation of this kind given by counsel from the Bar of this Court. It is clear, therefore, that this complaint against the prosecution should be rejected.

The next matter of complaint against the prosecution is that counsel for the Crown asked a great number of leading questions when examining the principal witness for the Crown. It is certainly true, as a cursory perusal of the transcript shows, that many leading questions, far too many, were put to this witness when he should have been examined with care since he was plainly an accomplice. Nevertheless, although we deprecate what occurred, we cannot say that it led to any injustice in this case and therefore we cannot uphold this as a ground of appeal.

Lastly there was the incident when a witness was seen talking to the foreman of the jury. Fortunately there is direct authority on the effect of an irregularity of this kind in a criminal trial. In *R. v. Twiss*[1] some jurymen spoke to prosecution witnesses during an adjournment about certain matters connected with the trial but the Judge after inquiry into the matter was satisfied that the prisoner had been in no way prejudiced and allowed the trial to proceed. The present case is clearer since the conversation between the prosecution witness and the juryman had nothing whatever to do with the trial. There was nothing therefore which could possibly have prejudiced the case of the appellant. We would however emphasise that although jurymen are allowed to go about while the trial is proceeding, it is desirable they should avoid any contact of any kind with witnesses concerned in the case and should not discuss the case with any one except other jurymen. In the present case nothing occurred to prejudice a fair trial and as the other matters raised in the appeal are points which we are clearly of the opinion should be decided against the appellant, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Wee Tiong, Rajah & Miranda.*

KHADIJAH BINTE ABDULLAH v. S. I. A. ALSAGOFF

[C. A. (Whyatt C.J. (S), Thomson C.J. (F.M.) and Tan Ah Tah J.) March 25, 1957]

[Singapore — Civil Appeal No. 27 of 1956]

Landlord and Tenant — Licensee of statutory tenant — Premises left by tenant, rent paid by him — A member of the family staying in the premises — Tenant's capacity to maintain action for trespass — Whether in possession — Control of Rent Ordinance (Cap. 242), ss. 14, 15, 16 & 27.

This was an appeal from a judgment in which it was held that the plaintiff was entitled to possession of a house known as 367 Orchard Road. The action was brought by the plaintiff against his former wife with a view to evicting her from the former matrimonial home which she had continued to occupy since their divorce in 1951. After their divorce, the plaintiff allowed her to remain in possession of the house, he paying the monthly rent to the landlord and living elsewhere. There was one period of a few months when he failed to pay the rent and the defendant paid it instead but he resumed payment after this interval and has continued to pay the rent right up to the commencement of these proceedings and indeed since that date. In 1953 the landlord served a notice to quit on the plaintiff but the plaintiff did not comply with the notice and accordingly claimed that he became a statutory tenant as from that date. During the whole of the period of four years or thereabouts which had elapsed since the plaintiff and defendant were divorced, the former had never set foot on these premises and in fact had never sought to do so except for the limited purpose of removing some sports gear and other personal belongings which he left behind when they parted in 1951. But in December 1954 he changed his mind. The explanation for this was that he "might get married and wanted the house back." Three months later, on March 10, 1955, he served a notice to quit on the defendant, requiring her to deliver up possession of the house which he claimed she held as a licensee on June 10, 1955, and as she did not do so, he issued the writ in these proceedings on June 23, 1955.

The parties had five children of whom the eldest was a daughter aged 18. Since their divorce, the girl and a younger brother lived with their mother at the premises, and the remaining children lived with the plaintiff.

Held: (Whyatt C.J. and Tan Ah Tah J., Thomson C.J. (F.M.) dissenting): the plaintiff remained in possession of the premises through the defendant and his daughter, and therefore he became a statutory tenant on the determination of his contractual tenancy. Having become a statutory tenant, the plaintiff remained under the protection of the Control of Rent Ordinance because his daughter, who was a member of his family was residing in the premises. By preserving his status as statutory tenant the plaintiff also established a sufficient right to or in the premises to support an action for trespass.

Thompson v. **Ward**[1] distinguished. Appeal dismissed.

Cases referred to:—

(1) *Thompson v. Ward* (1953) 2 Q.B. 153.
(2) *Skinner v. Geary* (1931) 2 K.B. 546.
(3) *Brown v. Brash* (1948) 2 K.B. 247.
(4) *Ramasamy Pillai v. Meyappa Chettiar* (1955) M.L.J. 105, 107.
(5) *Keeves v. Dean* (1924) 1 K.B. 685.
(6) *King's College, Cambridge v. Kershman* 64 T.L.R. 547.
(7) *Haskins v. Lewis* (1931) 2 K.B. 1.

COURT OF APPEAL.

N. A. Christopher for the appellant (defendant).

C. L. Duff for the respondent (plaintiff).

Whyatt C.J. : — This is an appeal from a judgment in which it was held that the plaintiff is entitled to possession of a house known as 367 Orchard Road. The action was brought by the plaintiff against his former wife with a view to evicting her from the former matrimonial home which she has continued to occupy since their divorce in 1951. After the divorce, the plaintiff allowed his former wife, the defendant, to remain in possession of the house, he paying the monthly rent to the landlord and living elsewhere. There was